

Summary of Special Education Law Changes in 2003

from the Introduction to the
26th Edition of the California Special Education Programs
A Composite Of Laws

This 26th edition of *California Special Education Programs – A Composite of Laws* covers Part 30 (commencing with Section 56000) of the Education Code relative to special education programs and includes Chapters 3 (commencing with Section 3000) and 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations relative to special education for children, aged birth through 21, with disabilities and uniform complaint procedures.

This document also includes Part 32 (commencing with Section 59000) of the Education Code covering the statutes governing the State Special Schools and Centers and the regulations implementing Chapter 26.5 of Division 7 of Title 1 of the Government Code, “Interagency Responsibilities for Providing Services to Children with Disabilities.” The interagency regulations, Chapter 1 (commencing with Section 60000) of Division 9 of Title 2 of the California Code of Regulations, begin on page G-1. The composite also contains selected provisions of the Education Code, Health and Safety Code, Government Code, Welfare and Institutions Code, noncodified sections, and the 2003-2004 Budget Act that have a direct impact on special education and related services for individuals with exceptional needs. This edition includes public health regulations of Title 17 that implement the California Early Intervention Services Act. The Act appears in Title 14 of the Government Code, which is also included in this edition.

Part 30 of the Education Code was rewritten in 1980, primarily by Senate Bill 1870 (Rodda) (Chapter 797), which became law on July 28, 1980. This legislation repealed the former 28 special education categorical programs and Education Code sections pertaining to the Master Plan for Special Education program that were in effect on January 1, 1980. It also restructured and added code sections implementing the Master Plan for Special Education statewide. Since the passage of SB 1870, 149 separate legislative measures have modified special education statutes contained in the California Education Code.

Chapter 3 of Division 1 of Title 5 of the California Code of Regulations, governing special education, was originally adopted to implement the Master Plan and became effective in March 1981. The State Board of Education adopted substantive amendments on December 11, 1987, and they became operative on April 20, 1988. Regulations governing behavioral interventions for special education pupils were approved in 1993 and amended in 1996. In December 1998 the State Board of Education adopted regulations pertaining to resource specialist caseload waivers. The State Board adopted regulations in 1999 pertaining to nonpublic, nonsectarian schools and agencies. Minor amendments were made to sections 3051.16 (Specialized Services for Low-Incidence Disabilities) and 3065 (Staff Qualifications – Related Services including Designated Instruction and Services) during 2002.

During 2003, seven legislative bills were chaptered into law amending, adding, or repealing special education provisions under Part 30 of the Education Code.

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The measures are as follows:

Senate Bill 145 (Alpert)	Chapter 368, Statutes of 2003 January 1, 2004
Senate Bill 464 (Murray)	Chapter 413, Statutes of 2003 January 1, 2004
Senate Bill 600 (Committee on Judiciary)	Chapter 62, Statutes of 2003 January 1, 2004
Assembly Bill 300 (Committee on Education)	Chapter 552, Statutes of 2003 January 1, 2004
Assembly Bill 490 (Steinberg)	Chapter 862, Statutes of 2003 January 1, 2004
Assembly Bill 1337 (Daucher)	Chapter 893, Statutes of 2003 January 1, 2004
Assembly Bill 1649 (Simitian)	Chapter 584, Statutes of 2003 January 1, 2004

Senate Bill 145 (Alpert) amends Section 56329 of the Education Code, pertaining to assessments, to provide that if a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding. New language also provides that if a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the public education agency shall have an opportunity to observe the proposed placement and the pupil in the proposed placement if the pupil has already been unilaterally placed in the nonpublic school by the parent or guardian.

Section 56505 of the Education Code, regarding due process hearings, was amended to require that a due process hearing be conducted by a person who has satisfactorily completed training. The Superintendent of Public Instruction shall "establish standards for the training of hearing officers, the degree of specialization of the hearing officers, and the quality control mechanisms to be used to ensure that the hearings are fair and the decisions are accurate."

SB 145 also amended Section 56505.1 of the Education Code, relative to rights of a due process hearing officer, to permit the hearing officer to set a reasonable limit on the length of the hearing after considering the issues to be heard; the complexity of the facts to be proven; the ability of the parties and their representatives, if any, to present their respective cases; and the estimate of the parties as to the time needed to present their respective cases. In addition, Section 56506 of the Education Code was amended to cite the proposed new language in Section 56329 regarding the right of the pupil and the parent to obtain an independent educational assessment.

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Senate Bill 464 (Murray) added Section 56341.2 to the Education Code to require a local educational agency to invite to the individualized education program team meetings a representative of the group home in those cases in which an individual with exceptional needs has been placed in a group home by a juvenile court.

Senate Bill 600 (Senate Judiciary Committee), a maintenance of the codes measure made numerous technical, nonsubstantive changes in various provisions of law, including the Education Code, to effectuate the recommendations made by the Legislative Counsel to the Legislature. Technical amendments were made to Education Code sections 56021.1 regarding the definition of "consent"; 56046 regarding the prohibition against intimidation, threats, or coercion of employees of a school district, county office of education, or a special education local plan area; 56341.5 regarding parent participation in a meeting of the individualized education program; and 56383 regarding meetings to review and revise an individualized education program of a pupil placed in a nonpublic, nonsectarian school.

Assembly Bill 300 (Assembly Education Committee), the annual omnibus clean-up bill to correct technical errors in statute, update cross references, and delete obsolete references resulted in the amendment of one special education section and the addition of a second section. Section 56343.5, pertaining to a parent request for an individualized education program meeting to review an individualized education program within a 30-day period, was amended to eliminate the language "not counting days in July and August," and added "not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays." Section 56836.30 was added to the Education Code to provide a mechanism for the California Department of Education to fund reorganized special education local plan areas, including any mergers or divisions.

Assembly Bill 490 (Steinberg) amended Section 56055 of the Education Code pertaining to the rights of foster parents when the natural parents' authority to make educational decisions has been extinguished. A subdivision (c) has been added to the section clarifying that the section "only applies if the juvenile court has limited the right of the parent or guardian to make educational decisions on behalf of the child, and the child has been placed in a planned permanent living arrangement pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, Section 366.26, or paragraph (5) or (6) of subdivision (b) of Section 727.3 of the Welfare and Institutions Code." In addition, a subdivision (d) has been added to specify that "a foster parent shall include a person, relative caretaker, or nonrelative extended family member as defined in Section 362.7 of the Welfare and Institutions Code, who has been licensed or approved by the county welfare department, county probation department, or the State Department of Social Services, or who has been designated by the court as a specified placement."

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The measure, among other changes to statutes, also adds Section 48853 to the Education Code to require that a pupil placed in a licensed children's institution or foster family home attend programs operated by the local educational agency, unless one of the following applies:

1. The pupil has an individualized education program requiring placement in a nonpublic, nonsectarian school or agency, or in another local educational agency.
2. The parent or guardian, or other person holding the right to make educational decisions for the pupil pursuant to Section 361 or 727 of the Welfare and Institutions Code or Section 56055 of the Education Code, determines that it is in the best interest of the pupil to be placed in another educational program, or that the pupil continue in his or her school of origin pursuant to paragraph (1) of subdivision (d) of Section 48853.5.

Assembly Bill 1337 (Daucher) amended Section 56505.2 of the Education Code prohibiting a due process hearing officer from rendering a decision that results in the placement, or reimbursement for the placement, of an individual with exceptional needs in a nonpublic, nonsectarian school, or that results in a service for the individual being provided by a nonpublic, nonsectarian agency, unless the hearing officer issues a written finding that the school district's program or program offer has not complied with legal requirements.

Former Governor Gray Davis issued a written statement when he signed the bill saying he was doing so "with a commitment from the author that she will work with the Department of Finance to craft cleanup legislation that will be pursued in the second year of this legislative session so as not to jeopardize federal funding." The former governor said he was "concerned about the bill's requirement that hearing officers assert in written findings that the district's program has not complied with legal requirements. Specifically, I am concerned that such a requirement would inappropriately encourage hearing officers to make this finding, even when it is not accurate. Further, by requiring such findings, the bill may jeopardize federal education funding."

Assembly Bill 1649 (Simitian) amended Section 56836.16 of the Education Code, the apportionments provision covering costs of master contracts with nonpublic, nonsectarian schools and agencies to provide special education instruction, designated instruction and services, or both, to pupils in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities, to include the costs of special education instruction, designated instruction and services, or both, provided directly by a school district with less than 3,000 average daily attendance, to pupils who reside in a skilled nursing facility. Prior law provided that costs for services routinely provided by the school district or county office of education could not be included in the master contracts with nonpublic, nonsectarian schools and agencies. AB 1649 made an exception to the list of services when those services are provided directly by a school district pursuant to an individualized education program of a pupil residing in a skilled nursing facility.

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The measure also amended Section 56836.17 of the Education Code, relative to the Superintendent of Public Instruction reimbursing each school district and county office of education for assessment, identification costs for nonpublic school placements for pupils in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities, to provide that the superintendent may also reimburse each school district and county office of education for assessment and identification costs for pupils who reside in a skilled nursing facility and are served directly by a school district with less than 3,000 average daily attendance.

Section 56836.175 was added to the Education Code to state that a "skilled nursing facility" for purposes of the licensed children's institutions funding article shall have "the same meaning as specified in Section 1250 of the Health and Safety Code, and shall be under contract with the State Department of Health Services to provide pediatric subacute care."

OTHER MEASURES

Assembly Bill 615 (Bates) (Chapter 208, Statutes of 2003) amended Section 33590 of the Education Code to require the State Board of Education, upon the recommendation of the Superintendent of Public Instruction, to appoint an individual to the 17-member Advisory Commission on Special Education who is a representative of the charter school community.

Assembly Bill 1038 (Negrete McLeod) (Chapter 843, Statutes of 2003), among other amendments, added Section 45120.2 to the Education Code providing classified employees, who are terminated, reassigned, or transferred, or become the employee of another employer as a result of the development or revision of a local plan for a special education local plan area, with specified employment rights previously accorded by law only to certificated employees.

Senate Bill 842 (Karnette) (Chapter 800, Statutes of 2003) added Section 60061.8 to the Education Code requiring that, after January 1, 2005, basic instructional materials adopted for public school use shall be more accessible to pupils with disabilities. The provision requires publishers to facilitate access to Internet resources and digital multimedia programs intended for use by the general population of pupils by pupils with disabilities who are progressing in the general curriculum.

Senate Bill 964 (Burton) (Chapter 803, Statutes of 2003) added Sections 60852.5 and 60852.6 to the Education Code providing for an independent consultant to assess options and provide recommendations for alternatives to the California High School Exit Examination for pupils with disabilities. The independent consultant, in consultation with the 15-member High School Exit Examination for Pupils with Disabilities Advisory Panel, shall prepare a report that does all of the following:

- (1) Recommends options for graduation requirements and assessments for pupils who are individuals with exceptional needs, as defined in Section 56026, or who are disabled, as defined in Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 7940).

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- (2) Identifies those provisions of state and federal law and regulation that are relevant to graduation requirements and assessments for pupils who are individuals with exceptional needs.
- (3) Recommends the steps that would be taken to bring California into full compliance with the state and federal law and regulations that are identified pursuant to paragraph (2).

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HIGHLIGHTS OF THE BUDGET ACT OF 2003-04

Assembly Bill 1765, (Chapter 157, Statutes of 2003), the Budget Act of 2003-04, in Budget Item 6110-161-001, provided a General Fund appropriation for special education programs in the amount of \$2,686,728,000, including \$72,615,000 for the Early Education Program, minus \$14,395,000 for the Early Education Program (Part C).

The budget allocated funding for special education growth at \$49.94 million or 1.34 percent. Funding from the Proposition 98 reversion account in the amount of \$4,908,000 was provided in Budget Item 6110-485-001 for allocation by the Superintendent of Public Instruction to special education local plan areas for reimbursement to districts to fully fund the 2001-02 special education average daily attendance increase.

Budget Item 6110-161-0890 provided a total of \$950,750,000 for special education programs from the federal Individuals with Disabilities Education Act. Of that amount \$797,208,000 was scheduled for local agency entitlements.

The budget provided \$69 million in federal capacity-building funds (Provision 17) to partially offset costs to counties of providing mental health services for special education services under Chapter 26.5, Division 7, Title 1 (commencing with Section 7570) of the Government Code. (See page J-5 and a related provision of law on page E-17 and Section 7576.5 of the Government Code on page F-10.) Since the passage of Assembly Bill 3632, (Chapter 1747, Statutes of 1984), the state has required county mental health agencies rather than local educational agencies to provide mental health services to individuals with exceptional needs who require those services as part of their individualized education program. Funding to reimburse counties for mental health services for individuals with exceptional needs through the state mandate claiming system (about \$100 million in past years) was not provided in 2002-03, and it was not provided in the 2003-04 Budget Act.